

**Equitable Construction Co., Inc. and Washington
Building and Construction Trades Council,
AFL-CIO. Case 5-RC-11396**

April 26, 1983

**DECISION AND DIRECTION OF
SECOND ELECTION**

**BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER**

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election¹ held on February 12, 1981, and the Hearing Officer's report recommending disposition of same.² The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations only to the extent consistent herewith.³

Contrary to the Hearing Officer's recommendation regarding the Employer's Objection 1(i), we find that the Petitioner's waiver of back dues was proscribed under the Supreme Court's decision in *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973). It is undisputed that Petitioner distributed to employees during the election campaign a pamphlet containing, *inter alia*, the statement that, "If you used to be in a union but dropped out, you'll find that you are welcome back during this *organizing drive* without a back dues penalty" (emphasis supplied). Nowhere else in this pamphlet nor in any other written or oral statements to employees did the Petitioner define the term "organizing drive" or indicate that the waiver was open for a period of time after the election. As the term "organizing drive" could reasonably be interpreted by employees as applying only to the period before the election and as any ambiguity must be resolved against the party who used the ambiguous term,⁴ we find that

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 22 for, and 18 against, the Petitioner; there was 1 challenged ballot, an insufficient number to affect the results.

² On May 8, 1981, the Acting Regional Director issued a report recommending that the Employer's objections be overruled and that a Certification of Representative issue. Thereafter, the Employer filed exceptions to the Acting Regional Director's report and recommendations. On September 11, 1981, the Board issued a Decision and Order Directing Hearing in which the Board adopted the Acting Regional Director's recommendation that the Employer's Objections 1(iii), (iv), (v), 2, 3, and 4 be overruled but remanded Objections 1(i) and (ii) to the Regional Director for the purpose of arranging a hearing to resolve the issues raised therein. On October 7, 1981, a hearing was held before Hearing Officer Milton A. Mayo, Jr. The Hearing Officer's Report on Objections was issued on January 27, 1982, to which the Employer filed exceptions and a supporting brief.

³ In the absence of exceptions thereto, we adopt, *pro forma*, the Hearing Officer's recommendation that Objection 1(ii) be overruled.

⁴ See *Inland Shoe Mfg. Co.*, 211 NLRB 724, 725 (1974).

the pamphlet linked the waiver of back dues to joining the Petitioner before the election, thereby constituting an impermissible inducement to employees. See *Denning*, 225 NLRB 657, 659 (1976); *NLRB v. Aladdin Hotel Corp.*, 584 F.2d 891 (9th Cir. 1978).

Our dissenting colleague relies heavily on the fact that, according to the Petitioner, it never required payment of back dues from former members when they rejoined the Petitioner. However, even if this were true, this policy was not communicated to any employee during the organization campaign nor was it articulated in the pamphlet which was distributed. To the contrary, an employee reading the pamphlet would likely interpret the Petitioner's policy as a waiver of back dues in the event the employee rejoined the Petitioner prior to the election.

In light of the foregoing, we find merit in the Employer's Objection 1(i) and we shall direct a second election in the appropriate unit.

[Direction of Second Election omitted from publication.]⁵

MEMBER JENKINS, dissenting:

I agree with the Hearing Officer that the pamphlet distributed by Petitioner, which contained a statement concerning its back dues policy, was not objectionable. Petitioner distributed an eight page pamphlet entitled, "It's Time To Get Organized" during its organizing campaign. The pamphlet, *inter alia*, outlined employees' rights during organizational campaigns and, in general, the advantages of unionization. At page seven of the pamphlet under the heading of "Former Members Welcome Back," the pamphlet stated that, "If you used to be in a Union but dropped out, you'll find that you are welcome back during this organizing drive without a back dues penalty." This statement reflected the Union's policy that it did not require payment of back dues as a condition precedent for reinstatement of union membership by former union members. The only monetary obligation incurred by new and reinstated members alike was a \$50 initiation fee and current dues. The Hearing Officer found that the pamphlet's language concerning Petitioner's back dues policy did not constitute an unlawful inducement violative of *NLRB v. Savair Mfg. Co.*⁶ since the statement was a "statement of fact" that if former union members joined the Petitioner, their financial obligation would be identical to those employees seeking union membership for the first time.

⁵ [Excelsior footnote omitted from publication.]

⁶ 414 U.S. 270 (1973).

Contrary to my colleagues in the majority, Petitioner has not violated the principles of *Savair*. The gravamen of this case is that, since, in fact, the Union's policy was *not* to require payment of back dues, there could be no impermissible "waiver" of back dues and therefore no unlawful inducement to employees. And as pointed out by the Hearing Officer, the pamphlet in issue here does nothing more or less than accurately explain the Union's policy on this and other issues.

The majority does not challenge the lawfulness of Petitioner's general policy not to require pay-

ment of back dues from former members who wish to rejoin. Since Petitioner did not change its policy during the campaign, there cannot, of course, be any waiver. However, the majority, in effect, treats Petitioner's campaign literature as a misrepresentation of its policy. I disagree, but even assuming, *arguendo*, that it was misrepresentation, it does not warrant setting aside the election.

Accordingly, I would adopt the Hearing Officer's recommendations, overrule the objections, and issue a certification of representative.